

91st Legislative Session – 2016

Committee: Senate Judiciary

Thursday, February 18, 2016

P - Present
E - Excused
A - Absent

Roll Call

P Bradford
P Heinert
P Monroe
P Rusch
P Vehle
P Novstrup (David), Vice-Chair
P Tieszen, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Senator Novstrup, Vice Chair.

MOTION: TO APPROVE THE MINUTES OF TUESDAY, FEBRUARY 16.

Moved by: Monroe
Second by: Vehle
Action: Prevailed by voice vote.

MOTION: SENATE ADVISE AND CONSENT TO THE APPOINTMENT OF CHARLES P. SCHROYER OF HUGHES COUNTY, PIERRE, SOUTH DAKOTA, TO THE BOARD OF PARDONS AND PAROLES

Moved by: Rusch
Second by: Vehle
Action: Prevailed by roll call vote. (5-0-2-0)

Voting Yes: Bradford, Monroe, Rusch, Vehle, Novstrup (David)

Excused: Heinert, Tieszen

MOTION: PLACE APPOINTMENT ON CONSENT CALENDER

Moved by: Vehle
Second by: Monroe
Action: Prevailed by voice vote.

SB 44: create provisions for aggravated vehicular homicide and classify the crime as a crime of violence.

Presented by: Marty Jackley, Attorney General
Proponents: Aj Franken, Governor's Office
Dan Todd on behalf of Gregg and Susan Spindler, parents of Megan Spindler
Paul Bachand, States Attorney Association
Opponents: Jay Davis, self, Rapid City
Lindsey Riter-Rapp, SD Association of Criminal Defense Attorneys

MOTION: AMEND SB 44

44ya

On the printed bill, delete everything after the enacting clause and insert:

" Section 1. That subdivision (9) of § 22-1-2 be amended to read:

- (9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, aggravated vehicular homicide, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

Section 2. That § 24-15A-32 be amended to read:

24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of life or death, or determined to be ineligible for parole as authorized in § 24-15A-32.1, shall have an initial parole date set by the department. This date shall be calculated by applying the percentage indicated in the following grid to the full term of the inmate's sentence pursuant to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit, any of the following crimes shall be considered a violent crime for purposes of setting an initial parole date: murder, manslaughter, aggravated vehicular homicide, rape, aggravated assault, riot, robbery, burglary in the first degree or burglary in the second degree if committed before July 1, 2006, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, child abuse, felony sexual contact as defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and 22-19A-3, photographing a child in an obscene act, felony assault as defined in § 22-18-26, felony

simple assault as defined in § 22-18-1, commission of a felony while armed as defined in §§ 22-14-12 and 22-14-13.1, discharging a firearm at an occupied structure or motor vehicle as defined in § 22-14-20, discharging a firearm from a moving vehicle as defined in § 22-14-21, criminal pedophilia as defined in § 22-22-30.1, threatening to commit a sexual offense as defined in § 22-22-45, abuse or neglect of a disabled adult as defined in § 22-46-2, and aggravated incest as defined in §§ 22-22A-3 and 22-22A-3.1:

Felony Convictions			
Felony Class	First	Second	Third
Nonviolent			
Class 6	.25	.30	.40
Class 5	.25	.35	.40
Class 4	.25	.35	.40
Class 3	.30	.40	.50
Class 2	.30	.40	.50
Class 1	.35	.40	.50
Class C	.35	.40	.50
Violent			
Class 6	.35	.45	.55
Class 5	.40	.50	.60
Class 4	.40	.50	.65
Class 3	.50	.60	.70
Class 2	.50	.65	.75
Class 1	.50	.65	.75
Class C	.50	.65	.75
Class B	1.0	1.0	1.0
Class A	1.0	1.0	1.0

Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences are not eligible for parole. An initial parole date through the application of this grid may be applied to

a life sentence only after the sentence is commuted to a term of years. A Class A or B felony commuted to a number of years shall be applied to the Class C violent column of the grid. An inmate convicted of a Class A or B felony who was a juvenile at the time of the offense and receives a sentence of less than life shall be applied to the Class C violent column of the grid.

Section 3. That chapter 22-16 be amended by adding a NEW SECTION to read:

Any person who, while under the influence of alcohol, drugs, or substances in a manner and to a degree prohibited by § 32-23-1, without design to effect death, operates or drives a vehicle of any kind in a reckless manner and thereby causes the death of another person, including an unborn child is guilty of aggravated vehicular homicide.

Any person who, while under the influence of alcohol, drugs, or substances in a manner and to a degree prohibited by § 32-23-1, without design to effect death, operates or drives a vehicle of any kind in a negligent manner and that person:

- (1) Has two or more convictions for a violation of § 32-23-1 occurring within ten years of the date of the violation being charged excluding any period of time during which the person was incarcerated for a previous violation;
- (2) Has at any time been convicted of a violation of § 22-16-41 or 22-18-36; or
- (3) Has a .17 percent or more by weight of alcohol in that person's blood as shown by a chemical analysis of that person's breath, blood, or other bodily substance; and

thereby causes the death of another person, including an unborn child is guilty of aggravated vehicular homicide.

Aggravated vehicular homicide is a Class 2 felony. In addition to any other penalty prescribed by law, the court shall order that the driver license of any person convicted of aggravated vehicular homicide be revoked for period of not less than fifteen years from the date sentence is imposed or ten years from the date of initial release from imprisonment, whichever is later. In the event the person is returned to imprisonment prior to the completion of the period of driver license revocation, time spent imprisoned does not count toward fulfilling the period of revocation.

Section 4. That the code be amended by adding a NEW SECTION to read:

If conduct constituting an offense under § 22-16-41 or section 3 of this Act also constitutes an offense under another section of this chapter, the defendant may be prosecuted under either section or under both sections. The defendant may be found guilty of one or both offenses but the court shall only enter a judgment of conviction for the greater of the offenses."

Moved by: Vehle
Second by: Novstrup (David)
Action: Prevailed by roll call vote. (4-3-0-0)

Voting Yes: Monroe, Vehle, Novstrup (David), Tieszen

Voting No: Bradford, Heinert, Rusch

MOTION: DO PASS SB 44

Moved by: Novstrup (David)
Second by: Monroe
Action: Prevailed by roll call vote. (5-2-0-0)

Voting Yes: Monroe, Rusch, Vehle, Novstrup (David), Tieszen

Voting No: Bradford, Heinert

MOTION: AMEND TITLE OF SB 44

44yta
On page 1, line 1, of the printed bill, delete everything after "Act to" and insert "create provisions for aggravated vehicular homicide and classify the crime as a crime of violence.".

Moved by: Novstrup (David)
Second by: Vehle
Action: Prevailed by voice vote.

SB 145: require certain provisions to be met before allowing public utilities or carriers to exercise eminent domain procedures.

Presented by: Senator Frerichs
Proponents: Paul Seamans, Self, Draper
John Harter, Self, Winner
Sabrina King, Dakota Rural Action
Opponents: Margo Northrup, South Dakota Association of Rural Water Systems
Brett Koenecke, South Dakota Electric Utility Companies
Drew Duncan, Trans Canada

MOTION: DEFER SB 145 TO THE 41ST LEGISLATIVE DAY

Moved by: Vehle
Second by: Novstrup (David)

Action: Was not acted on.

MOTION: SUBSTITUTE MOTION DO PASS SB 145

Moved by: Heinert

Second by: Bradford

Action: Failed by roll call vote. (2-5-0-0)

Voting Yes: Bradford, Heinert

Voting No: Monroe, Rusch, Vehle, Novstrup (David), Tieszen

THE MOTION TO DEFER SB 145 TO THE 41ST LEGISLATIVE DAY

Moved by: Vehle

Second by: Novstrup (David)

Action: PREVAILED BY ROLL CALL VOTE. (5-2-0-0)

Voting Yes: Monroe, Rusch, Vehle, Novstrup (David), Tieszen

Voting No: Bradford, Heinert

SB 157: provide additional regulations for commercial breeding operations.

Presented by: Senator Buhl O'Donnell

Proponents: Melissa John, Sioux Falls, Self

Jamie Al-Haj, Rapid City, Self

Tanya Sabin, Rapid City, Self

Opponents: Dr. Dustin Oedekoven, State Veterinarian

Dick Tieszen, South Dakota Sheriff's Association

Gary Sanborn, Madison, Self

Jean Gortmaker, St. Lawrence, Self

Mike Held, Dakota Pet Breeders

THE CHAIR DEFERRED SB 157 UNTIL LATER TODAY

THE CHAIR RECESSED THE MEETING UNTIL 3:30 P.M. TODAY OR 10 MINUTES AFTER
SESSION ADJOURNS.

Marilyn Seymour
Committee Secretary

Craig Tieszen, Chair